

1 *E-filed on* 9/8/06

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8 IN THE UNITED STATES DISTRICT COURT  
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
10 SAN JOSE DIVISION  
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12 IN RE CYGNUS TELECOMMUNICATIONS  
13 TECHNOLOGY, LLC, PATENT  
LITIGATION

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15 THIS ORDER RELATES TO:  
All Actions

No. MDL-1423  
This Order Applies to All Actions


C-02-00142 RMW  
C-02-00145 RMW  
C-02-05437 RMW  
C-03-03594 RMW  
C-03-03596 RMW  
C-03-03378 RMW  
C-03-04003 RMW  
C-03-05758 RMW  
C-04-01791 RMW  
C-04-03001 RMW  
C-04-03365 RMW  
C-04-04247 RMW  
C-04-04359 RMW  
C-06-03843 RMW  
C-06-04295 RMW

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22 ORDER DENYING CYGNUS'S MOTION TO  
EXCLUDE EVIDENCE CONSIDERED  
DURING REEXAMINATION  
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25 Plaintiff Cygnus Telecommunications Technology, LLC moves for summary judgment that  
26 references considered in the recent reexamination of the patents-in-suit may not be relied upon by  
27 the defendants here when asserting invalidity of the patents-in-suit. It is unclear from the motion the  
28 precise basis on which Cygnus seeks to exclude the evidence. Proceedings before the U.S. Patent

1 and Trademark Office are not binding on the courts.<sup>1</sup> See *Quad Envtl. Techs. Corp. v. Union*  
2 *Sanitary Dist.*, 946 F.2d 870, 875-76 (Fed. Cir. 1991). If the basis of Cygnus's motion is evidentiary  
3 rules, its timing is governed by the prior orders scheduling claim construction and related summary  
4 judgment motions, and any such motion to exclude evidence will be considered at the November 20,  
5 2006 hearing. Cygnus's motion is denied, though without prejudice to refile as to any specific  
6 evidence which defendants seek to introduce at any evidentiary hearing.

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9 DATED: 9/8/06

  
RONALD M. WHYTE  
United States District Judge

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28 <sup>1</sup> Cygnus clarified at oral argument that it was not seeking to exclude the evidence on the basis that  
the USPTO proceedings bound this court.

1 A copy of this order was mailed on \_\_\_\_\_ to:

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7 Counsel for plaintiff is responsible for ensuring that involved attorneys not on the above service list  
8 receive a copy of this order, if necessary, and shall inform the court of any omissions.  
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